

Department or Agency Number AMA
Contract Routing Number 00 -

SAMPLE STATE CONTRACT

TELECOMMUNICATIONS MULTI-USE NETWORK CONTRACT

THIS CONTRACT is made this _____ day of _____, in the year Two Thousand, between the STATE OF COLORADO, acting by and through the Department of Personnel, General Support Services, Colorado Information Technology Services, Telecommunication Services, with offices at 2452 West Second Avenue, Unit #19, Denver, CO 80223, for the use and benefit of the state agencies and institutions; each of whom are referred to herein as ("State", or "Customer") and _____, a [State of Incorporation] Corporation with offices at _____, hereinafter to as "Contractor" or "Vendor."

RECITALS

WHEREAS, the funds exist in the Law and Funds have been budgeted, appropriated, and otherwise made available and a sufficient uncommitted balance thereof remains available for encumbering and subsequent payment of this contract in Fund Number _____, Appropriation Account _____, and Organization Code _____, for these telecommunication services.

WHEREAS, required approval, clearance and coordination has been accomplished from and with appropriate agencies; and

WHEREAS, [Contractor's NAME] has been selected as the successful Vendor of State's Request For Proposal, RFP Number TK-00011-00, for the purpose of providing statewide high speed network infrastructure, connectivity to the equipment of State Aggregated Network Access Points, "ANAP" on behalf of all state agencies, municipalities, political sub-divisions, throughout the State, including rural Colorado; and

WHEREAS, in consideration for the performance of said work and services, the State agrees to pay to [CONTRACTOR'S NAME], fees and charges specified below, and

WHEREAS, the procurement of these services is authorized by the Colorado Procurement Code, and

WHEREAS, the State hereby warrants and represents that it has complied with the provisions of all applicable State of Colorado statutes, rules and regulations in order to enter into this Contract, as defined herein below; and

WHEREAS, the Contractor wishes to provide telecommunications services to the State as described in Paragraph #1, Scope of Work, below, and the State has a required need for such service.

NOW THEREFORE, it is hereby agreed that in consideration of the mutual covenants and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the State and Contractor agree to the following terms and conditions shall apply to [CONTRACTOR'S NAME]'s Contract for Service.

1. SCOPE OF WORK.

1.1 Subject to the terms and conditions set forth herein, the Vendor shall engineer, provide, deliver, test, and document the State's Multi-Use Network, "MNT" that provides the Telecommunications Backbone Network for the State and interfaces with the State "ANAP"s in accordance with the "Project" schedule proposed in the vendor's response to RFP# TK-00011-00, the "Project".

In general, the Contractor will provide secure, high speed, fiber-based telecommunication services capable of transporting data, video, and voice seamlessly to all ANAP's connected to the statewide network. ~~Redacted~~

....(Detailed description of Scope of Work to follow.)

The Contractor has developed a "Project" Schedule that describes all required areas of coverage and implementation phase timetable which shall be strictly adhered to. This "Project" Schedule has fully described the services, and/or hardware/software to be provided detailed project timetables, and detailed Engineering specifications. The Contractor shall submit a final "Project" Schedule and "MNT" system configuration to the State for approval prior to phase work being initiated.

1.2 "MNT" System Design and Performance Responsibility. The Vendor has complete responsibility for acceptable performance of the entire "MNT", including but not limited to the system design, implementation in accordance with the proposed schedule, and daily operational performance of the "MNT". The Vendor shall insure that performance standards for the technology in use, and as submitted in the Vendor's RFP Proposal are consistently met for the duration that services are provided. Final and interim "MNT" acceptance shall be based upon requirements in RFP, Section(s) _____, and the system acceptance plan developed by the vendor and approved by the State. Time is of the essence in meeting the proposed implementation schedule, and failure to perform in accordance with the schedule shall carry penalties as defined in paragraph 2.6, Liquidated Damages.

1.3 Any "MNT" service contracted for by the State herein shall be delivered to its proper location by the Vendor at the cost proposed to the State. The State shall not be deemed to have accepted, for the purposes of its Phase Acceptance Milestones, any component, service, or piece of hardware and/or software until such time as said service, hardware and/or Software has been properly installed, is operating in accordance with the acceptance technical specifications and is accepted by the State as completed.

1.4 The service, or hardware/software provided by the Vendor for the proper functioning of the System, shall be maintained and supported at no additional cost as specified in paragraph 5 and 13, Warranties and Remedies respectively, of this contract, for the full term of this contract, and any option periods exercised by the State. The contractor warrants that response times for service outages will be governed by the terms specified in the request for Proposals.

1.4.1 The Contractor shall propose to the State in writing any System Upgrades, revisions, updates, technology improvements or most favorable discount terms which may offered to its customers within thirty (30) days of the offer or release to the general public, throughout the remaining term of the contract. The State may accept such "enhancements," if desired, by the change order process specified in paragraph 1.5 below.

1.4.2 The Contractor agrees to continually provide to the State functionality based upon the most current adopted standards for the industry.

1.5 Change Orders

By a written order, at any time, and without notice to any surety, the procurement officer may, subject to all appropriate adjustments, make changes within the general scope of this contract including but not limited to the following:

- 1) Minimum performance requirements at any "ANAP";
- 2) Time of performance of services on the "Project" Schedule;

- 3) Physical location of any "ANAP".
- 4) System Upgrades to any or all "ANAP"s of the "MNT" system.

Adjustments of Price or Time or Performance

If any such change order increases or decreases the contractor's cost of, or the time required for, performance of any part of the work under this contract, an adjustment shall be made and the contract modified in writing accordingly. Any adjustment in contract price made pursuant to this clause shall be determined in accordance with the Price Adjustment Clause of this contract.

Failure of the parties to agree to an adjustment

Failure of the parties to agree to an adjustment shall not excuse the contractor from proceeding with the contract as changed, provided that the purchasing agency promptly and duly makes such provisional adjustments in payment or time for performance as may be reasonable. By proceeding with the work, the contractor shall not be deemed to have prejudiced any claim for additional compensation, or an extension of the time for completion.

Time Period for Claim

Within 30 days after receipt of a written change order under the Change Order paragraph of this clause, unless such period is extended by the procurement officer in writing, the contractor shall file notice of intent to assert a claim for an adjustment.

Claim Barred After Final Payment

No claim by the contractor for an adjustment hereunder shall be allowed if asserted after final payment under this contract.

Bilateral Change Order Letters

Bilateral changes within the general scope of the contract may be executed using the simplified change order letter process described in this paragraph and the model letter attached as exhibit _____ for any of the following reasons:

- 1) Where the agreed changes result in no adjustment to the [price] [ceiling cost], delivery schedule, or other terms and conditions of the contract. The change letter will contain a mutual release of claims for adjustment of price, cost, time for performance, or other terms and conditions, whether based on costs of changed work or direct or indirect impacts on unchanged work, as a result of the change; or
- 2) Where the changes to the contract are priced based on the unit prices to be paid for the goods or services in [Exhibit ____] [Attachment ____] of the contract; or
- 3) Where the changes to the contract are priced based on established catalog prices generally extended to the public, or on prices or rates set by law or regulation;

Written bilateral change order letter

The written bilateral change order letter will be substantially in the form at Exhibit _____, must bear the signature of the authorized agency official, the contractor, and--except where the parties agree on the face of the change order that no price/cost, schedule, or other contract adjustments are due the contractor--the State Controller or his designee. The change order letter shall refer to the basic contract and include a detailed description of the changes to the contract, the price or cost ceiling adjustment, the effective date, and (where applicable) the time within which the changed work must be done. Other bilateral modifications to this contract not within the scope of this paragraph must be executed by formal amendment to the contract, approved in accordance with State law.

a) Price Adjustments

- A. Price Adjustment Method. Any adjustment in contract price pursuant to the application of a clause in this contract shall be made in one or more of the following ways:

- 1) By agreement on a fixed-price adjustment;
 - 2) By unit prices specified in the contract;
 - 3) In such other manner as the parties may mutually agree; or
 - 4) In the absence of agreement between the parties, by a unilateral determination by the procurement officer of the costs attributable to the event or situation covered by the clause, plus appropriate profit or fee.
- B. **Submission of Cost or Pricing Data.** The contractor shall provide cost or pricing data for any price adjustment subject to the provisions of the Cost or Pricing Data Section of the Colorado State Procurement Rules.

1.6 Intellectual Property Rights

Any software, reports, data, manuals, or other documents, drawings or materials ("works") delivered or prepared by contractor in the performance of its obligations under this contract shall be subject to an irrevocable nonexclusive, perpetual, paid-up, transferable license to use, and permit others to use for State purposes, the software, reports, data, or other documents, drawings, or materials. The use rights described herein shall include but not be limited to, the right to copy, publish, display, transfer, prepare derivative works, or otherwise use the works.

1.7 Data and Document Deliverables

- a) Unless otherwise specified, the contractor shall deliver by the dates specified in the order the data or documents required by the Request for Proposal, as well as any proposed by the contractor.

Database of System configurations, management monitoring system specifications and requirements, etc.

- b) It is the intent of the parties that documentation be written so persons reasonably proficient in the use of the program language or generally familiar with the type of telecommunication services involved can efficiently use the documentation to understand the equipment functions, troubleshoot problems, and in the case of software, understand program structure, iterative and other control techniques, and decipher error messages should they occur. The contractor warrants that the delivered documentation will be sufficiently descriptive to enable maintenance troubleshooting of the telecommunication services consistent with the intended uses of the telecommunication services and software.

2. PERFORMANCE PERIOD.

2.1. TERM

Subject to availability of funds, the term of this Contract will be effective upon approval by the State Controller ("Commencement Date"), or designee, and shall continue through _____, five year from the contract start date, subject to termination as provided herein and availability of funds for payments due in subsequent fiscal years.

2.2 OPTIONS

The State may require continued performance for a period of five subsequent years in one year increments of renewal of any services within the limits and at the rates specified in the contract. The State may exercise the option by written notice to the contractor deposited in the mail before the end of the performance period of the contract using a form substantially equivalent to Exhibit _____. If the State exercises this option, the extended contract shall be considered to include this option provision. The total duration of this contract, including the exercise of any options under this clause, shall not exceed ten (10) years. Financial obligations of the State of Colorado payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

2.3 AVAILABILITY OF FUNDS

- A. The parties hereto understand and agree this contract is contingent upon continuing availability of funds as provided in Special Provision Two (2) hereinafter, and that the State is prohibited by law from making fiscal commitments beyond the term of its current fiscal period. The State may terminate this contract as provided in the following paragraphs.
- B. The State has reason to believe that sufficient funds will be available for the full term of the contract. Where, for reasons beyond State's control, its funding entity does not allocate funds for any fiscal period beyond the one in which this contract is entered into, or beyond a succeeding fiscal period, where State has exhausted efforts to obtain funds legally available for future fiscal periods, and where such failure to obtain funds does not result from any act or failure to act on the part of State, State will not be obligated to make the payments remaining beyond State's then current fiscal period, nor shall State be liable for any penalty therefore. In that event, State shall notify contractor of such non-allocation of funds by sending written notice thereof to the contractor thirty (30) days prior to the effective date of termination.
- C. To supplement the provisions of Special Provision paragraph 2 of this contract regarding fund availability, and to make certain the understanding of the parties because the contract will extend beyond the current fiscal year, State and contractor understand and intend that the obligation of the State to pay the annual charges hereunder constitutes a current expense of the State payable exclusively from State's funds and shall not in any way be construed to be a general obligation indebtedness, or other multiple fiscal year financial obligation whatsoever, of the State of Colorado or any agency or department thereof, within the meaning of any provision of sections 1, 2, 3, 4 or 5 of article XI, Section 20 of article X, of the Colorado Constitution, or any other constitutional or statutory limitation or requirement applicable to the State concerning the creation of indebtedness. Neither the State, nor the contractor on its behalf, has pledged the full faith and credit of the State, or any agency or department thereof, to the payment of the charges hereunder, and this contract shall not directly or contingently obligate the State, or any agency or department thereof, to apply money from, or levy or pledge any form of taxation to, the payment of the annual charges.

2.4 "PROJECT" SCHEDULE

The Contractor warrants that it can design and furnish an integrated, fully functioning "MNT" having the components and coverage described in accordance with the "Project" schedule in the request for proposal, and the Vendor's Response. A detailed deliverable implementation schedule is itemized in Exhibit _____. The not-to-exceed amount by fiscal year periods, subject to adjustment in accordance with the Change Order paragraph, is as follows:

Fiscal Year 1: \$ _____	Delivered by: _____
Fiscal Year 2: \$ _____	Delivered by: _____
Fiscal Year 3: \$ _____	Delivered by: _____
Fiscal Year 4: \$ _____	Delivered by: _____
Fiscal Year 5: \$ _____	Delivered by: _____

2.5 "PROJECT" PERFORMANCE IMPORTANCE

The parties agree that "time is of the essence" for implementation of the "Project" Schedule. Subject to extensions of time pursuant to the force majeure clause, or for reasons attributable to the fault of the State, the contractor will complete the service implementation for the "ANAP"s by the dates specified in the RFP. Failure to complete the milestones by the dates specified in the "Project" Schedule shall be grounds for termination for default, liquidated damages, and any other remedies available to the State.

2.6 LIQUIDATED DAMAGES

When the contractor is given notice of delay or nonperformance and fails to cure in the time specified, in addition to any other damages that are applicable, the contractor shall be liable for \$205.00 per "ANAP" per calendar day from date set for cure until either the purchasing agency reasonably obtains similar supplies or services if the contractor is terminated for default, or until the contractor provides the supplies or services if the contractor is not terminated for default. To the extent that the contractor's delay or nonperformance is excused under paragraph 15(d) of the Termination for Default Clause, the Excuse for Nonperformance or Delayed Performance, or paragraph 14, Force Majeure of this contract, liquidated damages shall not be due the purchasing agency. The parties agree that the damages from breach of this contract are difficult to prove or estimate, and the amount of liquidated damages

specified herein represents a reasonable estimation of damages that will be suffered by the State from late performance, including costs of additional inspection and oversight, lost opportunity for additional efficiencies that would have attended on-time completion of performance. Liquidated damages assessed shall reduce the then current invoice amount to be paid. Assessment of liquidated damages shall not be exclusive of or in any way limit remedies available to the State at law or equity for contractor breach.

3. CHARGES.

3.1 Unless otherwise specified in the award, this contract does not require the State or any other ordering entity to satisfy any particular requirement or order any minimum quantity of telecommunications services. The State and any ordering entity will pay at the rates in the contractor's proposal in accordance with the volume discount pricing extended and accepted by the State for guaranteeing minimum quantities or satisfying specific requirements, if applicable. Otherwise, the contractor will be entitled to payment for services at the unit rates otherwise specified.

The following clause, 3.2, will be applicable if proposed to and accepted by the State:

3.2 Indefinite Delivery / Indefinite Quantity Contract

A) The quantities and services specified in the Schedule are estimates only and are not purchased by this contract. Delivery or performance shall be made only as authorized by change-order letters issued in accordance with the Bi-lateral Change clause. The contractor shall furnish to the State, when and if ordered, the supplies and services specified. Any order issued during the effective period of this contract and not completed within that period shall be completed by the Contractor within the time specified in the order. The contract shall govern the contractors and State's rights and obligations with respect to that order to the same extent as if the order were completed during the contract's effective period; provided, that the contractor shall not be required to make any deliveries under this contract after _____. (insert date)

Funds are available and encumbered in the amount of \$ _____, for FY1999-2000. The contractor shall not accept any orders which create a financial obligation of the State exceeding the amount of available funds specified herein. Additionally, the contractor shall notify the representative when State commitments, paid and unpaid, are within 10% of the amount of funds available. The State is not liable beyond the amount of funds specified as available in this paragraph.

The State may from time to time, in a form substantially equivalent to that in Exhibit _____, and bearing the approval of the State Controller or his designee, make more funds available on this contract. The funds availability letter shall not be deemed valid until it shall have been approved by the State Controller or such assistant as he may designate.

B) Additional pricing discounts

The Contractor has proposed additional pricing discounts in Exhibit _____, Vendor's Response to the RFP. It details percentage discounts off rates for telecommunications services that will be applied monthly based on overall volume of service or equipment ordered by State agencies, institutions, and political subdivisions, minimum quantities of service or equipment orders by ordering entities, or any combination. Such additional pricing discounts proposed in the RFP represent contractual commitments by the Contractor. Proposed credits or rebates based on volume of telecommunications services and/or customer premise equipment, shall be offered in accordance with the RFP response, and requires administration of its credit/rebate system as proposed in the RFP for tracking and reporting the usage and available credit/rebate by ordering entity.

3.3 The Contractor shall submit a written performance report detailing the operational rates for each Contractor's duties and obligations, and a summary report of the implementation of "ANAP"s as defined by the

"Project" Schedule detailed in Exhibit _____, on a quarterly basis, or as specified in Exhibit _____. The Contractor shall also provide quarterly, the volume of billing in comparison to the "not-to-exceed" amount of the contract for the current fiscal year detailed in paragraph 2.3. The preparation of reports in a timely manner shall be the responsibility of the Contractor and failure to comply may result in withholding or elimination of payment of funds and/or termination of the Contract. "ANAP's not meeting the required performance standards shall be subject to the charges detailed in paragraph 2.5, "Liquidated Damages".

3.4 As specified in Exhibit _____, payment for any services will not be made until inspections and acceptance are made in accordance with paragraph 4 below.

3.5 The State shall have the right to purchase service or equipment during the "Project" Schedule Implementation; at the rates proposed in the vendor's response to the RFP, or the lowest prevailing discounted rates charged by the Contractor, whichever is less, not to exceed the total price specified in paragraph 2.3 for the configuration specified in the RFP. The Contractor shall offer the equipment itemized in the RFP or proposed technologically updated compliant service or equipment not itemized at the time of the award, which incorporates the most recent and current standards and functionality which are compatible with the existing "MNT" system, at the lowest prevailing discounted market rates. This Contract makes no guarantees of the volume of equipment or services beyond any yearly minimums specified elsewhere in this contract to be ordered during subsequent years of the Contract option periods.

3.6 Total cost of this Contract shall not exceed \$ _____, if there are no variations from the original RFP proposal based on the "ANAP" locations proposed by the vendor in their response to the RFP, and accepted and specified by the State in this contract.

4. INSPECTION AND ACCEPTANCE. The State reserves the right to inspect services performed and supplies and equipment delivered under this Contract at all reasonable times and places during the term of the Contract. If any of the services or supplies do not conform with Contract requirements, the State may reject nonconforming supplies or require the Contractor to perform the services again in conformity with Contract requirements, with no additional payment. In the case of a State election to accept nonconforming tender, or when defects in quality or quantity of service cannot be corrected by re-performance, the State may (1) require the Contractor to take necessary action to insure that the future performance conforms with the contract requirements and (2) equitably reduce the payment due the Contractor to reflect the reduced value of the services performed or supplies accepted. These remedies in no way limit the otherwise remedies available to the State in this Contract or remedies otherwise available at law or equity.

5. WARRANTIES. Contractor warrants that all supplies (and services) furnished under this Contract shall be free from defects in materials or workmanship, are installed properly and in accordance with manufacturers recommendations or other industry standards, and will function in a manner which meets industry accepted performance standards and/or descriptions which have been submitted by the Contractor as part of their RFP proposal, from the date of acceptance of installation for the duration of the "Project." Contractor shall, at its option, repair or replace any supplies or re-perform services that fail to satisfy this warranty during the warranty period. Additionally, contractor agrees to assign to the State all written manufacturers warranties relating to the supplies and to deliver such written warranties to the customer. The existence of this or any other express warranty in this contract shall not impair or limit the remedies otherwise granted under this contract or available to the State at law or equity.

6. BILLING FOR SERVICE.

6.1. CUSTOMER shall pay each bill in full within forty-five (45) days of delivery of supplies or equipment or completion of services, after receipt of an acceptable invoice describing the supplies delivered, services performed date of delivery or performance, and account of payment due pursuant to this Contract. A State liability not paid within forty-five days is considered delinquent and interest on the unpaid balance shall be paid beginning with the forty-sixth day at the rate of one-percent per month on the unpaid balance until paid in full. A liability shall not arise if a good faith dispute exists as to the agency's obligation to pay all or a portion of the liability.

7. **TAX EXEMPT STATUS.** It is hereby recognized and acknowledged by [CONTRACTOR'S NAME] that CUSTOMER is tax-exempt and is not liable for any sales, use, excise, property, or other taxes imposed by any federal, state or local government tax authority. CUSTOMER's FEIN # is 84-730123K. CUSTOMER's tax exemption number is 98-02565. CUSTOMER is also not liable for any taxes of [CONTRACTOR'S NAME] for franchise or related to the income of the [CONTRACTOR'S NAME]. No taxes of any kind shall be charged to CUSTOMER.

8. **CONFIDENTIALITY.** In the event the contractor or its employees shall obtain access to any confidential information, records or files of the ordering entity in connection with the performance of its obligations under this agreement or any order placed pursuant to this agreement, the contractor shall keep such records, files, and information confidential and shall comply with all laws and regulations concerning the confidentiality of such records to the same extent as such laws and regulations apply to the ordering entity. "Confidential information, records or files" shall not mean information which the ordering entity has denominated in writing as not confidential; or information which at the time of disclosure is in the public domain by having been printed and published and widely available to the public, e.g. information in public libraries or repositories. The contractor shall notify its employees in writing that they are subject to the confidentiality requirements set forth above.

9. **FACILITIES AND/OR PROPERTY FURNISHED BY THE ORDERING ENTITY**

9.1 The ordering entity shall deliver to the contractor, for use in connection with and under the terms of the contract, the facilities or property described in the order together with any related data and information that the contractor may request and is reasonably required for the intended use of the property (hereinafter referred to as "government-furnished property"), a list of which is furnished in Exhibit ____.

9.2. The ordering entity and its designees shall have access at all reasonable times to the premises in which any government-furnished property is located for the purpose of inspecting the property. The contractor shall maintain an inventory and accountability system acceptable to the ordering entity, and mark or tag the property in accordance with reasonable procedures of the ordering entity.

9.3. Risk of loss. Unless otherwise provided in the order, the contractor assumes the risk of, and shall be responsible for, any loss or destruction of, or damage to, government-furnished property or facilities upon its delivery to or use by the contractor. However, the contractor is not responsible for reasonable wear and tear to property of the ordering entity or for government-furnished property properly consumed in performing the order.

9.4 Equitable adjustment. When this clause specifies an equitable adjustment, it shall be made to any affected contract provision in accordance with the procedures of the Changes clause. When appropriate, the State may initiate an equitable adjustment in favor of the State. The right to an equitable adjustment shall be the contractor's exclusive remedy. The State shall not be liable to suit for breach of contract for:

- 1) Any delay in delivery of State-furnished property;
- 2) Delivery of State-furnished property in a condition not suitable for its intended use;
- 3) A decrease in or substitution of State-furnished property; or
- 4) Failure to repair or replace State property for which the State is responsible.

9.5. Upon completing the order, or at such earlier dates as may be fixed by the ordering entity, the contractor shall submit, in a form acceptable to the ordering entity, inventory schedules covering all items of government-furnished property not consumed in performing the contract or delivered to the ordering entity. The contractor shall prepare for shipment, deliver f.o.b. origin, or dispose of the government-furnished property as may be directed or authorized by the ordering entity. The net proceeds of any such disposal shall be credited to payment due under the order or shall be paid to the ordering entity as it may direct.

10. **LAWFULNESS.** This Contract and the parties' actions under this Contract shall comply with all applicable federal, state, and local laws, rules, regulations, court orders, and governmental agency orders.

11. **LEGAL AUTHORITY.** The Contractor warrants that it possesses the legal authority to enter into this Contract and that it has taken all actions required by its procedures, by-laws, and/or applicable law to exercise that

authority, and to lawfully authorize its undersigned signatory to execute this Contract and to bind the Contractor to its terms. The person(s) executing this Contract on behalf of the Contractor warrant(s) that such person(s) have full authorization to execute this Contract.

12. **SEVERABILITY.** To the extent that this Contract may be executed and performance of the obligations of the parties may be accomplished within the intent of the Contract, the terms of the Contract are severable, and should any term or provision hereof be declared invalid or become inoperative for any reason, such invalidity or failure shall not affect the validity of any other term or provision hereof.

13. **REMEDIES.** In addition to any other remedies provided for in this Contract and without limiting its remedies otherwise available at law, the State may exercise the following remedial actions if [CONTRACTOR'S NAME] substantially fails to satisfy the duties and obligations in the Contract. Substantial failure to satisfy the duties and obligations shall be defined to mean significant insufficient, incorrect, improper performance, activities, or inaction by (CONTRACTOR'S NAME). These remedial actions are as follows:

13.1 Suspend [CONTRACTOR'S NAME]'s performance pending necessary corrective action as specified by CUSTOMER without [CONTRACTOR'S NAME]'s entitlement to adjustment in price/cost or schedule; and/or

13.2 Withhold payment to [CONTRACTOR'S NAME] until the necessary Services or corrections in performance are satisfactorily completed; and/or

13.3 Deny payment for Services which have not been performed or conforming supplies or equipment not delivered due to circumstances caused by [CONTRACTOR'S NAME].

13.4 Terminate the Contract for default.

The above remedies are cumulative and the ordering entity, in its sole discretion, may exercise any or all of them individually or simultaneously.

14. **FORCE MAJEURE.**

Neither the Contractor nor the State shall be liable to the other for any delay in, or failure of performance of, any covenant or promise, nor shall any delay or failure constitute default or give rise to any liability for damages if, and only to the extent that, such delay or failure is caused by "force majeure". "Force majeure" means acts of God; acts of the public enemy; acts of the State and any governmental entity in its sovereign or contractual capacity; fires; floods; epidemics, quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather, or any other cause which is beyond the control of the party affected and which, by the exercise of reasonable diligence, could not have been prevented by the party affected.

The existence of such causes of delay or failure shall extend the period for performance to such extent as may be necessary to enable the complete performance in the exercise of reasonable diligence after the causes of delay or failure have been removed. Nothing in this paragraph shall prevent the State from covering its requirements from another vendor during the period of delay.

15. **TERMINATION FOR DEFAULT/CAUSE.**

a. **Default.** If the Contractor refuses or fails to timely perform any of the provisions of this contract, with such diligence as will ensure its completion within the time specified in this contract, the State may notify the Contractor in writing of the non-performance, and if not promptly corrected, such officer may terminate the Contractor's right to proceed with the contract or such part of the contract as to which there has been delay or a failure to properly perform. The Contractor shall continue performance of the contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services elsewhere.

b. **Contractor's Duties.** Notwithstanding termination of the contract and subject to any directions from the State, the Contractor shall take timely reasonable, and necessary action to protect and preserve property in the possession of the Contractor in which the State has an interest.

c. **Compensation.** Payment for completed supplies delivered and accepted by the State shall be at the contract price. The State may withhold amounts due to the Contractor as the State deems to be necessary to protect the State against loss because of outstanding liens or claims of former lien holders and to reimburse the State for the excess costs incurred in procuring similar goods and services.

d. **Excuse for Nonperformance or Delayed Performance.** The Contractor shall not be in default by reason of any failure in performance of this contract in accordance with its terms if such failure arises out of acts of God; acts of the public enemy; acts of the State and any governmental entity in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. Upon request of the Contractor, the State shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, the Contractors progress and performance would have met the terms of the contract, the delivery schedule shall be revised accordingly, subject to the rights of the purchasing agency.

e. **Erroneous Termination for Default.** If after notice of termination of the Contractors right to proceed under the provisions of this clause, it is determined for any reason that the Contractor was not in default under the provisions of this clause, or that the delay was excusable, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to the termination for convenience clause.

16. **INSURANCE.**

a. The [Contractor] shall obtain, and maintain at all times during the term of this agreement insurance in the following kinds and amounts:

(i) Standard Worker's Compensation and Employer Liability as required by State statute, including occupational disease, covering all employees on or off the work site, acting within the course and scope of their employment,

(ii) General, Personal Injury, and Automobile Liability (including bodily injury, personal injury, and property damage) minimum coverages;

(1) Combined single limit of \$600,000 written on an occurrence basis.

(2) Any aggregate limit will not be less than \$1,000,000.

(3) Combined single limit of \$600,000 for policies written on a claims-made basis. The policy shall include an endorsement, certificate, or other evidence that coverage extends three years beyond the performance period of the contract.

(4) If any aggregate limits are reduced below \$600,000 because of claims made or paid during the required policy period, the Contractor shall immediately obtain additional insurance to restore the full aggregate limit and furnish a certificate or other document showing compliance with this provision.

b. The State of Colorado shall be named as additional insured on each liability policy.

c. The insurance shall include provisions preventing cancellation without 60 days prior notice by certified mail to the State.

d. The [vendor][Contractor] shall provide certificates showing adequate insurance coverage to the State within 7 working days of award or contract execution, unless otherwise provided.

17. INDEPENDENT CONTRACTOR RELATIONSHIP. THE CONTRACTOR SHALL PERFORM ITS DUTIES HEREUNDER AS AN INDEPENDENT CONTRACTOR AND NOT AS AN EMPLOYEE. NEITHER CONTRACTOR NOR ANY AGENT OR EMPLOYEE OF CONTRACTOR SHALL BE OR SHALL BE DEEMED TO BE AN AGENT OR EMPLOYEE OF CUSTOMER. CONTRACTOR SHALL PAY WHEN DUE ALL REQUIRED EMPLOYMENT TAXES AND INCOME TAXES AND LOCAL HEAD TAX ON ANY MONIES PAID PURSUANT TO THE CONTRACT. CONTRACTOR ACKNOWLEDGES THAT CONTRACTOR AND ITS EMPLOYEES ARE NOT ENTITLED TO UNEMPLOYMENT INSURANCE BENEFITS UNLESS CONTRACTOR OR A THIRD PARTY PROVIDES SUCH COVERAGE AND THAT CUSTOMER DOES NOT PAY FOR OR OTHERWISE PROVIDE SUCH COVERAGE. CONTRACTORS SHALL HAVE NO AUTHORIZATION, EXPRESS OR IMPLIED, TO BIND THE ORDERING ENTITY TO ANY CONTRACTS, LIABILITY, OR UNDERSTANDING EXCEPT AS EXPRESSLY SET FORTH HEREIN. CONTRACTOR SHALL PROVIDE AND KEEP IN FORCE WORKER'S COMPENSATION (AND SHOW PROOF OF SUCH INSURANCE) AND UNEMPLOYMENT COMPENSATION INSURANCE IN THE AMOUNTS REQUIRED BY LAW, AND SHALL BE SOLELY RESPONSIBLE FOR THE ACTS OF CONTRACTOR ITS EMPLOYEES OR AGENTS.

18. LICENSES, PERMITS AND RESPONSIBILITIES. [CONTRACTOR'S NAME] certifies that, at the time of entering into this Contract, it has currently in effect all necessary licenses, certifications, approvals, insurance, permits, etc. required to properly perform the Services of this Contract. [CONTRACTOR'S NAME] warrants that it will maintain all necessary licenses, certifications, approvals, insurance, permits, etc. required to properly perform this Contract without reimbursement by CUSTOMER or other adjustment in contract price. Additionally, all employees of [CONTRACTOR'S NAME] performing services shall hold the required licenses or certification, if any, to perform their responsibilities. Any revocation, withdrawal or non-renewal of necessary licenses, certifications, approvals, insurance, permits, etc. required for [CONTRACTOR'S NAME] to properly perform this Contract shall be grounds for termination of this Contract for default.

19. ASSIGNMENT AND SUCCESSORS

The contractor agrees not to assign rights or delegate duties under this contract [or subcontract any part of the performance required under the contract] without the express, written consent of the State [which shall not be unreasonably withheld]. Except as herein otherwise provided, this agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns. This provision shall not be construed to prohibit assignments of the right to payment to the extent permitted by section 4-9-318, CRS, provided that written notice of assignment adequate to identify the rights assigned is received by the controller for the Department of Personnel executing this contract. Such assignment shall not be deemed valid until receipt by such controller -- as distinguished from the State Controller -- and the contractor assumes the risk that such written notice of assignment is received by the controller for the Department of Personnel.

20. REPRESENTATIVES AND NOTICES.

Representatives and Notice

Representatives. For the purpose of this Contract, the individuals identified below are hereby designated representatives of the respective parties. Either party may from time to time designate in writing new or substitute representatives:

State of Colorado
Attn: MNT Project Director
Name
2452 W. 2nd Avenue, #19
Denver, CO 80223

[Contractor]
Name
Address
City, ST Zip

Authority. With respect to the representative of the State, such individual shall have the authority to inspect and reject services, approve invoices for payment, and act otherwise for the State, except with respect to the execution of formal amendments to or termination of this Contract.

Notices. All notices required to be given by the parties hereunder shall be hand delivered or given by certified or registered mail to the individuals at the addresses set forth below. Either party may from time to time designate in writing substitute addresses or persons to whom such notices shall be sent.

State of Colorado
Attn: MNT Project Director
Name
2452 W. 2nd Avenue, #19
Denver, CO 80223

[Contractor]
Attn: Specify
Address
City, ST Zip

21. GOVERNMENTAL IMMUNITY. Notwithstanding any other provisions of this Contract, no term or condition of this Contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions of the Colorado Governmental Immunity Act, section 24-101, et. seq., C. R. S., as now or hereafter amended.

22. WAIVER. The waiver of any breach of a term, provision, or requirement of the Contract shall not be construed or deemed as waiver of any subsequent breach of such term, provision or requirement, or of any other term, provision, or requirement.

23. GOVERNING LAW AND VENUE. The laws of the State of Colorado shall be applied in the interpretation, execution, and enforcement of this Contract. The venue for any judicial action relating to performance of this contract shall be in the City and County of Denver.

24. YEAR 2000 WARRANTY.

The contractor warrants that any software, firmware, or supplies delivered, or services performed, this contract to be used before, during, and after the turn of the century (January 1, 2000) are "Year 2000 compliant." "Year 2000 compliant" means fault-free performance in the processing of date and date-related data (including, but not limited to calculating, comparing, and sequencing) by all software products, firmware, and supplies, individually and in combination as a system, when used in accordance with the product documentation provided by the contractor. Fault-free performance means:

- no invalid or incorrect results or abnormal termination prior to, during, and after January 1, 2000 as a result of date or date-related data or data processing that represents or references different centuries or more than one century; and
- proper calculation and handling of leap years; and
- except for normal user interfaces (e.g. four digit date entry) identified in the contractor's or vendor's documentation, such date data processing shall be transparent to the user.

In the event this warranty is breached, the State may elect to (1) return the software or supply and receive a refund of the purchase price (in the case of delivered software or supplies) or (2) require the contractor to make all code revisions or repairs/replacements of firmware or supplies, as well as revisions to associated documentation, at no cost to the State in order to ensure that the software, firmware or supplies are Year 2000 compliant so long as notice of such defect is provided no later than 90 days after discovery. This warranty shall survive acceptance of the software, firmware, or supplies and is not subject to any disclaimer or limitation of warranty or other limitation of the contractor's liability which may be specified in the contract. The remedies specified herein shall not be exclusive remedies and shall not limit any other remedy at law or equity available to the State

25. ENTIRE UNDERSTANDING. This Contract constitutes the entire understanding between CUSTOMER and [CONTRACTOR'S NAME]. No prior or contemporaneous addition, deletion, or other amendment hereto shall have any force or effect whatsoever, unless embodied herein in writing. No subsequent novation, renewal, addition, deletion, or other amendment hereto shall have any force or effect unless embodied in a writing executed and approved pursuant to the State Fiscal Rules.

26. In the event of conflicts or inconsistencies between this Contract and its Exhibits or attachments, such conflicts or inconsistencies shall be resolved by reference to the documents in the

- 1) Colorado Special Provisions,
- 2) Contract,
- 3) The RFP, Exhibit A.
The Vendor's RFP Response, Exhibit B. The "Project" Schedule, or subsequent changes to the

27. COLORADO SPECIAL PROVISIONS. The Colorado Special Provisions, required by Fiscal Rule 3-1, 1 and shall govern in the event of any conflict or inconsistency between the terms of any order and this Contract. With respect to paragraph 1 of the Special Provisions, State Controller or designee approval is not required for State

Exhibit ____

Sample Bilateral Change Order Letter

Date: _____

State Fiscal Year 2000-2001

Bilateral Change Order Letter No. _____

In accordance with Paragraph _____ of contract routing number _____, AMA _____, between State of Colorado, General Support Services, Telecommunication Services and Contractor

covering the period of January 15, 2000 through June 30, 2005 the undersigned agree that the supplies/services affected by this change letter are modified as follows:

Services/Supplies

Price/Cost

The maximum amount payable by the State for _____ [service] [supply] in Paragraph _____ is (increased/decreased) by (\$ amount of change) to a new total of (\$ _____) based on the unit pricing schedule in accordance with the applicable service category submitted in the Contractors RFP Proposal which governs Service to the state. The first sentence in Paragraph _____ is hereby modified accordingly;
OR

The parties agree that the changes made herein are "no cost" changes and shall not be the basis for claims for adjustment to [price] [cost ceiling], delivery schedule, or other terms or conditions of the contract. The parties waive and release each other from any claims or demands for adjustment to the contract, including but not limited to price, cost, and schedule, whether based on costs of changed work or direct or indirect impacts on unchanged work. Controller approval of this "no cost" change is not required. _____ contractor initials. _____ Agency initials.

This change to the contract is intended to be effective as of _____, but except with respect to "no cost" changes identified above, in no event shall it be deemed valid until it shall have been approved by the State Controller or such assistant as he may designate.

Please sign, date, and return all copies of this letter on or before _____ 19____.

Contractor Name: _____

State of Colorado:

BILL OWENS, GOVERNOR

By: _____
Name _____
Title _____

By: _____
For the Executive Director
Colorado Department of _____

APPROVALS:

FOR THE STATE CONTROLLER
Arthur L. Barnhart

By: _____
For _____ Division

By: _____
State Controller or Designee

Exhibit _____

Date: _____

[Contractor]
[Address]

In accordance with Paragraph _____ of contract routing number _____, FAA ADA _____, between State of
and Contractor
covering the period of January 15, 2000 through June 30, 2005 the State hereby exercises the option for Year _____.

As approved in the Contract, if the final approved changes the State's financial obligation hereunder, an amended
Open Exercise Letter must be executed. Upon proper execution
constitute notice to continue "MINT" system service for the next year. The maximum amount payable by the State
for this Phase _____ is \$ _____ it has been
approved by the State Controller or such assistant as he may designate.

BILL OWENS, GOVERNOR

For the Executive Director

Title

FOR THE STATE CONTROLLER
Arthur L.

By: _____
For _____ Division

By: _____
State Controller or Designee

Indefinite Quantity Contract Funding Letter

Exhibit _____

Date: _____

TO: [Contractor]

SUBJ: Indefinite Quantity Funding Letter No. _____

In accordance with Paragraph _____ of contract routing number _____, AMA _____, between the State of Colorado, General Support Services, Telecommunication Services and

[Contractor]

covering the period of January 15, 2000 through June 30, 2005 the undersigned commits the following funds to the contract:

The amount of funds available and specified in paragraph _____ is (~~increased/decreased~~) by (\$ amount of change) to a new total funds available of (\$ _____) to satisfy orders under the contract. Paragraph _____ is hereby modified accordingly.

This funding letter does not constitute an order for services under this contract.

This funding letter is effective upon approval by the State Controller or such assistant as he may designate.

State of Colorado:
BILL OWENS, GOVERNOR

By: _____
For the Executive Director
Department of _____

APPROVALS:

FOR THE STATE CONTROLLER
Arthur L. Barnhart

By: _____
For _____ Division

By: _____
State Controller or Designee

Exhibit ____
Deliverable Implementation Schedule

To be detailed:

Exhibit ____
State Furnished Equipment

Location

Equipment Description